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c 11 The Nursing Homes Act, 1972

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CHAPTER 11

The Nursing Homes Act, 1972*Assented to April 21st, 1972**Session Prorogued December 15th, 1972*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,Interpre-
tation

- (a) "Board" means the Nursing Homes Review Board established under section 6;
- (b) "Director" means the Director appointed under subsection 2 of section 2;
- (c) "inspector" means an inspector appointed under section 15;
- (d) "licensee" means a person who is the holder of a licence under this Act;
- (e) "Minister" means the Minister of Health;
- (f) "Ministry" means the Ministry of Health;
- (g) "nursing home" means any premises maintained and operated for persons requiring nursing care or in which such care is provided to two or more unrelated persons, but does not include any premises falling under the jurisdiction of,

- (i) *The Charitable Institutions Act*, R.S.O. 1970, c. 62
- (ii) *The Children's Boarding Homes Act*, R.S.O. 1970, c. 65
- (iii) *The Children's Mental Health Centres Act*, R.S.O. 1970, c. 68
- (iv) *The Homes for the Aged and Rest Homes Act*, R.S.O. 1970, c. 206
- (v) *The Mental Hospitals Act*, R.S.O. 1970, c. 270

R.S.O. 1970,
c. 361

(vi) *The Private Hospitals Act*, or

R.S.O. 1970,
c. 378

(vii) *The Public Hospitals Act*;

(h) "regulations" means the regulations made under this Act;

(i) "resident" means a person admitted to and lodged in a nursing home. R.S.O. 1970, c. 302, s. 1; 1971, c. 34, s. 1, *amended*.

Administra-
tion of Act

2.—(1) The Minister is responsible for the administration and enforcement of this Act and the regulations. R.S.O. 1970, c. 302, s. 2.

Director

(2) The Minister shall appoint an officer of the Ministry to be the Director for the purposes of this Act. *New.*

Licence
required

3. No person shall establish, operate or maintain a nursing home except under the authority of a licence issued by the Director under this Act. R.S.O. 1970, c. 302, s. 3, *amended*.

Issuance
of licence

4.—(1) Subject to subsection 2, any person who applies in accordance with this Act and the regulations for a licence to establish, operate or maintain a nursing home and who meets the requirements of this Act and the regulations and who pays the prescribed fee is entitled to be issued the licence.

Grounds for
refusal

(2) Subject to section 7, the Director may refuse to issue a licence where in his opinion,

(a) the proposed nursing home or its operation would contravene this Act or the regulations or any other Act or regulation or any municipal by-law respecting its establishment or location;

(b) there is no public need for the nursing home in the area where the applicant proposes to establish, operate or maintain the nursing home;

(c) the past conduct of the applicant or, where the applicant is a corporation, of its officers or directors affords reasonable grounds for belief that the home will not be operated in accordance with the law and with honesty and integrity;

(d) the applicant is not competent to operate a nursing home in a responsible manner in accordance with this Act and the regulations or is not in a position to furnish or provide the required services. 1971, c. 34, s. 3, *part, amended*.

(3) A licence expires twelve months after the date of its ^{Expiration} issue or renewal. _{of licence}

(4) A licence is not transferable. ^{Not} _{transferable}

(5) Where a licensee is a corporation, the licensee shall ^{Notice of} notify the Director in writing within fifteen days of any _{changes} change in the officers or directors of the corporation.

(6) Every person who is licensed to establish, maintain ^{Continuance} and operate a nursing home under *The Nursing Homes Act*, being chapter 302 of the Revised Statutes of Ontario, 1970, immediately before this Act comes into force, shall be deemed to be licensed under this Act and unless sooner surrendered or revoked, the licence continues in force until the expiry date thereof subject to this Act and the regulations. *New.*

5. The Director may revoke or refuse to renew a nursing ^{Revocation} home licence where, _{and refusal to renew}

- (a) the licensee is in contravention of this Act or the regulations or of any other Act or regulation that applies to the nursing home;
- (b) there is a breach of a condition of the licence;
- (c) any person has made a false statement in the application for the licence or renewal thereof, or in any report, document or other information required to be furnished by this Act or the regulations or by any other Act or regulation that applies to the nursing home;
- (d) where the licensee is a corporation a change in its officers or directors would, if it were an applicant, afford grounds for refusing to issue a licence under clause c of subsection 2 of section 4;
- (e) the nursing home is being operated in a manner that is prejudicial to the health, safety or welfare of the residents cared for therein. 1971, c. 34, s. 3, *part.*

6.—(1) The Nursing Homes Review Board is established and ^{Nursing} shall be composed of not fewer than three and not more than _{Homes} seven members who shall be appointed by the Lieutenant _{Review} Governor in Council, one of whom shall be appointed as _{Board} chairman.

(2) A majority of the members of the Board constitute a ^{Quorum} quorum and is sufficient for the exercise of all the jurisdiction and powers of the Board.

Remunera-
tion

(3) The members of the Board who are not employed in the public service of Ontario shall be paid such remuneration and expenses as are determined by the Lieutenant Governor in Council. 1971, c. 34, s. 3, *part*.

Protection
from personal
liability

(4) No action or other proceeding for damages shall be instituted against the Director, any member of the Board, or anyone acting under the authority of such Director or member, for any act done in good faith in the execution or intended execution of his duty or for any alleged neglect or default in the execution in good faith of his duty. *New*.

Notice of
proposal to
revoke or
refuse to
renew

7.—(1) Where the Director proposes to refuse to issue or renew or to revoke a licence under this Act, he shall serve notice of his proposal, together with written reasons therefor, on the applicant or licensee.

Notice
requiring
hearing

(2) A notice under subsection 1 shall inform the applicant or licensee that he is entitled to a hearing by the Board if he mails or delivers, within fifteen days after the notice under subsection 1 is served on him, notice in writing requiring a hearing to the Director and the Board and he may so require such a hearing.

Powers of
Director
where no
hearing

(3) Where an applicant or licensee does not require a hearing by the Board in accordance with subsection 2, the Director may carry out the proposal stated in his notice under subsection 1.

Powers of
Board where
hearing

(4) Where an applicant or licensee requires a hearing by the Board in accordance with subsection 2, the Board shall appoint a time for and hold the hearing and, on the application of the Director at the hearing, may by order direct the Director to carry out his proposal or refrain from carrying out his proposal and to take such action as the Board considers the Director ought to take in accordance with this Act and the regulations, and for such purposes the Board may substitute its opinion for that of the Director.

Extension
of time for
requiring
hearing

(5) The Board may extend the time for the giving of notice requiring a hearing by an applicant or licensee under this section either before or after expiration of such time where it is satisfied that there are *prima facie* grounds for granting relief to the applicant or licensee pursuant to a hearing and that there are reasonable grounds for applying for the extension and the Board may give such directions as it considers proper consequent upon the extension.

Continuation
of licence
pending
renewal

(6) Where, within the time prescribed therefor or, if no time is prescribed, before the expiry of his licence, a licensee

has applied for renewal of his licence and paid the prescribed fee, his licence shall be deemed to continue,

- (a) until the renewal is granted; or
- (b) where he is served with notice that the Director proposes to refuse to grant the renewal, until the time for giving notice requiring a hearing by the Board has expired and, where a hearing is required, until the Board has made its decision. 1971, c. 34, s. 3, *part.*

8.—(1) The Director, the applicant or licensee who has ^{Parties} required the hearing and such other persons as the Board may specify are parties to proceedings before the Board under this Act.

(2) Notice of a hearing under section 7 shall afford the ^{Notice of hearing} applicant or licensee a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements for the issue or retention of the licence.

(3) An applicant or licensee who is a party to proceedings ^{Examination of documentary evidence} under subsection 1 shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

(4) Members of the Board holding a hearing shall not have ^{Members holding hearing not to have taken part in investigation, etc.} taken part before the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the Board may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

(5) The oral evidence taken before the Board at a hearing ^{Recording of evidence} shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

(6) The findings of fact of the Board pursuant to a ^{Findings of fact} hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of *The Statutory Powers Procedure Act, 1971.*

Only
members at
hearing to
participate in
decision

(7) No member of the Board shall participate in a decision of the Board pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of the Board shall be given unless all members so present participate in the decision.

Release of
documentary
evidence

(8) Documents and things put in evidence at the hearing shall, upon the request of the person who produced them, be released to him by the Board within a reasonable time after the matter in issue has been finally determined. 1971, c. 34, s. 3, *part.*

Appeal
to court

9.—(1) Any party to the proceedings before the Board may appeal from its decision or order to the Supreme Court in accordance with the rules of court.

Record to
be filed
in court

(2) Where any party appeals from a decision or order of the Board, the Board shall forthwith file in the Supreme Court the record of the proceedings before it in which the decision was made, which, together with the transcript of evidence if it is not part of the Board's record, shall constitute the record in the appeal.

Minister
entitled to
be heard

(3) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section.

Powers of
court on
appeal

(4) An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the Board and may exercise all powers of the Board to direct the Director to take any action which the Board may direct him to take and as the court considers proper and for such purposes the court may substitute its opinion for that of the Director or of the Board, or the court may refer the matter back to the Board for rehearing, in whole or in part, in accordance with such directions as the court considers proper. 1971, c. 34, s. 3, *part.*

Service of
notice

10. Except where otherwise provided, any notice required by this Act to be served may be served personally or by registered mail addressed to the person to whom notice is to be given at his latest known address and, where notice is served by registered mail, the service shall be deemed to have been made on the third day after the day of mailing unless the person to whom notice is given establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the notice until a later date. 1971, c. 34, s. 3, *part.*

11. The Minister may at any time during the course of the proceedings under sections 7 to 9 apply *ex parte* to a judge of the High Court by originating notice of motion for an interim order authorizing the Director to occupy and operate the nursing home under section 12 pending the outcome of the proceedings, and the judge may issue the order where, in the opinion of the judge, it is necessary for the health, safety or welfare of the residents in the nursing home. *New.* ^{Restraining order}

12.—(1) Where the licensee's licence is revoked, and the revocation becomes final or where the nursing home is otherwise being operated without a licence, the residents or their legal representatives where the residents are unable so to do, shall arrange to vacate the premises as soon as it is practicable and the Director shall assist in finding alternative accommodation. ^{Removal of residents}

(2) For the purposes of arranging alternative accommodation under subsection 1, the Minister may, notwithstanding sections 25 and 40 of *The Expropriations Act*, immediately occupy and operate the nursing home or arrange for the nursing home to be occupied and operated by a person or organization designated by him, for a period not exceeding six months, but all the rights of the licensee under that Act, except the right to possession, are preserved. ^{Interim management R.S.O. 1970, c. 154}

(3) Where the licensee's licence is revoked, the licensee and the administrator shall hand over to the Minister, or a person designated by him, all the records that are in their possession or control and that pertain to the residents of the nursing home. *New.* ^{Records}

13.—(1) Every nursing home shall have an extended care unit consisting of such facilities, services and bed capacity for extended care as are prescribed by the regulations. ^{Extended care units}

(2) Where, in the opinion of the Director, special circumstances warrant reduction in the facilities, services or bed capacity required in an extended care unit under subsection 1, the Director may, by order, authorize the reduction of the said facilities, services or bed capacity to such amount, for such times and under such conditions as are specified in the order. *New.* ^{Relief in special cases}

14. Where a licensee provides services that are insured services under *The Health Insurance Act, 1972*, payment therefor under the said Act, together with such co-payment, if any, as is prescribed by the regulations, shall be deemed payment in full for the services. *New.* ^{Payment for insured services 1972, c. 91}

Appointment of inspectors **15.**—(1) The Minister may appoint such inspectors as are necessary for the purposes of this Act and the regulations and such appointments shall be in writing. R.S.O. 1970, c. 302, s. 12 (1), *amended*.

Certificate of appointment (2) The Minister shall issue to every inspector a certificate of his appointment and every inspector, in the execution of his duties under this Act and the regulations, shall produce his certificate of appointment upon request. *New*.

Inspection **16.**—(1) An inspector may at any time enter upon the business premises of a nursing home to make an inspection to ensure that the provisions of this Act and the regulations are being complied with.

Idem (2) Where an inspector has reasonable and probable grounds to believe that any premises are being used as a nursing home without being licensed under this Act, the inspector may at any reasonable time enter upon such person's business premises to make an inspection for the purpose of determining whether or not the person is in contravention of section 3.

Powers on inspection (3) Upon an inspection under this section, the inspector,
(a) is entitled to free access to all books of account, documents, bank accounts, vouchers, correspondence and records, including medical and drug records, that are relevant for the purposes of the inspection; and
(b) may, upon giving a receipt therefor, remove any material referred to in clause a that relates to the purpose of the inspection for the purpose of making a copy thereof, provided that such copying is carried out with reasonable dispatch and the material in question is promptly thereafter returned to the person being inspected,

and no person shall obstruct the inspector or withhold or destroy, conceal or refuse to furnish any information or thing required by the inspector for the purposes of the inspection.

Admissibility of copies (4) Any copy made as provided in subsection 3 and purporting to be certified by an inspector is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original. R.S.O. 1970, c. 302, s. 12, *amended*.

Disclosure to Minister (5) Any record required to be kept under this Act or the regulations shall be made available to the Minister on request. *New*.

17. No person shall use the terms "nursing home" or "extended care home" or words of like import in connection with any premises unless he is licensed under this Act. *New.* ^{Use of appellations}

18. Any person who contravenes any provision of this Act ^{Penalty} or the regulations, except subsection 1 of section 12, is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000. R.S.O. 1970, c. 302, s. 13, *amended.*

19. The Lieutenant Governor in Council may make such ^{Regulations} regulations in respect of nursing homes as are considered necessary to carry out the purposes of this Act, and in particular,

- (a) defining the terms "intermediate nursing care", "nursing care" and "extended care" for purposes of this Act and the regulations;
- (b) governing the services, care, facilities and amenities that nursing homes shall provide and governing and prescribing the staff requirements and duties of staff in respect of the care and services that shall be provided residents;
- (c) respecting the assessment and classification of residents for the purpose of determining the level of care required by residents;
- (d) respecting extended care units and the facilities and services to be provided therein and respecting the facilities and services that are to be provided for intermediate nursing care;
- (e) prescribing the percentage of the licensed bed capacity of the nursing home that is to be set aside for extended care standard ward and private and semi-private accommodation and prescribing the percentage of the licensed bed capacity of the nursing home that is to be set aside for intermediate nursing care standard ward and private and semi-private accommodation;
- (f) governing the construction, establishment, location, safety, equipment, maintenance and repair of and additions or alterations to nursing homes and respecting the information, plans and other material that are to be furnished to the Director;
- (g) respecting the management and operation of nursing homes;

- (h) respecting the officers, staff and employees of nursing homes and prescribing their duties, responsibilities and qualifications for employment;
- (i) requiring the bonding of the chief administrators of nursing homes in such form and terms and with such collateral security as are prescribed and providing for the forfeiture of bonds and the disposition of the proceeds;
- (j) requiring in-service training programs to be provided staff and employees;
- (k) prescribing the books, records and accounts that shall be kept by nursing homes;
- (l) requiring the accounts of nursing homes to be audited and requiring nursing homes to furnish such information or accounts as may be required by the Minister;
- (m) governing the reports and returns that shall be made to the Minister by licensees;
- (n) providing for the issuing of licences and prescribing the terms and conditions of licences and the fees payable therefor;
- (o) respecting and governing the admission, treatment, care, conduct, discipline and discharge of residents of nursing homes;
- (p) prescribing other duties of inspectors;
- (q) governing access to medical or drug records by specified persons for specified purposes;
- (r) prescribing the amounts that may be charged residents as co-payment with amounts payable under *The Health Insurance Act, 1972*;
- (s) prescribing the maximum amounts that may be charged residents in respect of private and semi-private accommodation;
- (t) regulating or prohibiting charges by nursing homes in respect of any amenity or facility required to be provided;
- (u) instituting a system for budgeting the annual expenditure of nursing homes and the payment by

the Province of all or any part of such budget in lieu of amounts payable under *The Health Insurance Act, 1972*; 1972, c. 91.

- (v) exempting designated nursing homes from specified provisions of this Act or the regulations;
- (w) prescribing forms for the purposes of this Act and providing for their use. R.S.O. 1970, c. 302, s. 14 (1), *amended*.

20. (1) *The Nursing Homes Act*, being chapter 302 of the Revised Statutes of Ontario, 1970, is repealed. R.S.O. 1970, c. 302, repealed

(2) *The Nursing Homes Amendment Act, 1971*, being chapter 34, is repealed. 1971 Act, repealed

21. This Act shall be deemed to have come into force on the 1st day of April, 1972. Commencement

22. This Act may be cited as *The Nursing Homes Act, 1972*. Short title

